

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

STACEY LAMAR,

Plaintiff,

**1:09-cv-1154
(GLS\DRH)**

v.

**INSTITUTE FOR FAMILY HEALTH
and DR. JOHN McANDREW,**

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

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Kingston, NY 12401

RUSSELL A. SCHINDLER, ESQ.

FOR THE DEFENDANTS:

Institute for Family Health
Babchik, Young Law Firm
200 East Post Road
2nd Floor
White Plains, NY 10601

JACK BABCHIK, ESQ.

Dr. John McAndrew
Kenny, Stearns Law Firm
26 Broadway
New York, NY 10004

GINO A. ZONGHETTI, ESQ.

Gary L. Sharpe

District Court Judge

MEMORANDUM-DECISION AND ORDER

I. Introduction

Plaintiff Stacey Lamar commenced this action against her employer, the Institute for Family Health, and her direct supervisor, Dr. John McAndrew, alleging claims of hostile work environment under Title VII of the Civil Rights Act of 1964¹ against both defendants, and a state law claim for battery against Dr. McAndrew. (See Am. Compl., Dkt. No. 5.) Pending is Dr. McAndrew's motion to dismiss Lamar's claims against him. (Dkt. No. 6.) For the reasons that follow, the motion is granted in part and denied in part.

II. Standard of Review

The standard of review under FED. R. CIV. P. 12(b)(6) is well established and will not be repeated here. For a full discussion of the standard, the court refers the parties to its decision in *Dixon v. Albany County Bd. of Elections*, No. 1:08-CV-502, 2008 WL 4238708, at *2 (N.D.N.Y. Sept. 8, 2008).

III. Discussion

¹42 U.S.C. § 2000e, *et seq.*

Dr. McAndrew first argues that Lamar's Title VII claim against him must be dismissed because he, as Lamar's direct supervisor, is not subject to Title VII liability. (See Def. Mem. of Law at 4-6, Dkt. No. 6 (citing, *inter alia*, *Tomka v. Seiler Corp.*, 66 F.3d 1295, 1313 (2d Cir. 1995), *abrogated on other grounds by Burlington Indus. v. Ellerth*, 524 U.S. 742 (1998) ("[I]ndividual defendants with supervisory control over a plaintiff may not be held personally liable under Title VII.").) Conceding this point, Lamar has agreed to withdraw her Title VII claim against Dr. McAndrew. (Pl. Mem. of Law at 1, Dkt. No. 10:1.) Accordingly, Lamar's Title VII claim against Dr. McAndrew is dismissed.

Dr. McAndrew next argues that if Lamar's Title VII claim is dismissed, her state law battery claim should also be dismissed. Specifically, Dr. McAndrew urges the court to decline to exercise its supplemental jurisdiction over the claim in the absence of any extant federal claims against him. (See Def. Mem. of Law at 6-7, Dkt. No. 6.) However, because the allegations underlying the battery claim are essentially the same as those comprising Lamar's remaining Title VII

claim,² the court finds that permitting the state law claim to survive at this juncture would best serve the interests of judicial economy, convenience, and fairness. *Klein & Co. Futures, Inc. v. Bd. of Trade*, 464 F.3d 255, 263 (2d Cir. 2006) (“In deciding whether to exercise jurisdiction over supplemental state-law claims, district courts should balance the values of judicial economy, convenience, fairness, and comity” (citation omitted)). Accordingly, the portion of Dr. McAndrew’s request seeking dismissal of Lamar’s battery claim is denied.

IV. Conclusion

WHEREFORE, for the foregoing reasons, it is hereby

ORDERED that Dr. McAndrew’s motion to dismiss (Dkt. No. 6) is **GRANTED** insofar as Lamar’s Title VII claim against Dr. McAndrew is **DISMISSED**; and it is further

ORDERED that Dr. McAndrew’s motion to dismiss is **DENIED** insofar as it seeks dismissal of Lamar’s state law claim for battery; and it is further

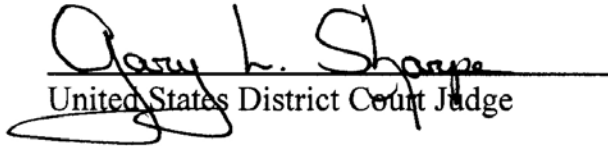
ORDERED that the Clerk provide a copy of this Memorandum-

²Lamar alleges that she was the victim of a hostile work environment when she was subjected to, among other things, nonconsensual touching by Dr. McAndrew, which is the same touching that forms the basis of Lamar’s battery claim. (See Am. Compl. ¶¶ 52-54, 60, 67-68, Dkt. No. 5.)

Decision and Order to the parties.

IT IS SO ORDERED.

June 25, 2010
Albany, New York


United States District Court Judge